IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6798 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL KAUSHIKBHAI VINUBHAI & 10 - Petitioner(s)

Versus

D D O & 2 - Respondent(s)

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Appearance :

MR YV SHAH for Petitioner(s) : 1 - 4.
MR HS MUNSHAW for Respondent(s) : 1,
MR MUKESH PATEL Ld. AGP for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 23/02/2006

ORAL JUDGMENT

1. Heard the learned Advocate, Mr.Y.V.Shah, on behalf of petitioners and learned Advocate, Mr.H.S.Munshaw, appearing on behalf of respondent

No.1 and learned AGP, Mr.Mukesh Patel, for respondent Nos.2 and 3.

2. In the present petition, the petitioners have challenged dismissal order dated 17th July,2002 by way of direct writ petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India. Learned Advocate, Mr.Munshaw, appearing on behalf of respondent No.1 submitted that petitioners having alternative effective statutory remedy for challenging such order of dismissal, direct petition filed by the petitioners is not maintainable as disputed questions of facts and law are arise in the present petition. Therefore, he submitted that present petition is not maintainable in law. He relied upon the recent decision of Apex Court in case of U.P.State Spinning Co. Ltd. Vs. R.S.Pandey and Anr., reported in JT 2005 (12) 242. Relevant observations made by Apex Court which has been relied by learned Advocate, Mr.Munshaw, in Para.15, is as under :

"In a catena of decisions it has been held

that writ petition under Article 226 of the Constitution should not be entertained when the statutory remedy is available under the Act, unless exceptional circumstances are made out."

2.1 Learned Advocate, Mr.Munshaw, relying on this decision, has submitted that petitioners are not able to point out exceptional circumstances to challenge the dismissal order straightway before this Court. He also submitted that against each petitioner, there are number of serious allegations and because of their negligence, there was damage to the respondent Panchayat. He also submitted that before passing the dismissal order, show cause notice was served to the petitioners and thereafter, order of dismissal has been passed. Therefore, according to him, reasonable opportunity was given.

3. Learned Advocate, Mr.Y.V.Shah, submitted that detailed inquiry has not been made by the respondents before passing dismissal order. These are the disputed questions of facts and it cannot be

considered to be the exceptional circumstances to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. The petitioners having alternative effective statutory remedy to challenge such dismissal order, according to my opinion, present petition is not maintainable and same is dismissed on the ground that the petitioners having alternative remedy. This Court has not expressed any opinion of merits and it is open for the petitioners to challenge the dismissal order before appropriate forum in accordance with law and to raise all available legal contentions before the Authority, and respondents are also at liberty to raise all available defence under the law before the Authority. Rule is discharged. Interim relief, if any, stands vacated.

(H.K.RATHOD,J.)

(vipul)